

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 322 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A'BAD MUNICIPAL CORPORATION

Versus

FINCAST FOUNDRY FLUX CO.

Appearance:

MR BP TANNA for appellant

No one is present on behalf of the respondent although names of the learned counsel representing the respondent have been duly shown in the board.

CORAM : MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/04/99

ORAL JUDGEMENT

This appeal under the B.P.M.C. Act is directed against the order dated 3rd March, 1988 passed by the Small Causes Court at Ahmedabad in M.V.Appeal No.14085 of 1987. The learned counsel for the appellant has submitted that from March, 1986, Odhav area was included in the Ahmedabad Municipal Corporation area. The premises in question is being used for the industrial purpose and it is an industrial shed situated in GIDC Estate in Odhav. Even according to the respondent-M/s Fincast Foundry Flux Company, it was constructed in the year 1976 and the constructed portion is 334 sq.mtrs. This property bears Survey No.Y/209-0041-00/1/3 Shed No.393 and was assessed by the Municipal Corporation for the purpose of property tax and gross rateable value was fixed by the Corporation at Rs.64,080/-. Against this assessment, the respondent preferred an appeal before the Small Causes Court and the same has been partly allowed by fixing the gross rateable value at Rs.7,500/- for the year 1988.

2. The learned counsel for the appellant has submitted that, in fact, the built up area is 481.50 sq.mtrs. and the Small Causes Court has committed an error apparent on the face of the record in mentioning the area to be 334 sq.mtrs. only instead of 481.50 sq.mtrs. It is also pointed out that the Small Causes Court materially erred in not considering the area of walls, rooms, pillars, etc. which is a constructed portion and the value of the open land has also not been taken into consideration. It is also submitted that the rent for constructed portion would be different than the rent for the open land. The learned counsel for the appellant has argued that the Small Causes Court has passed an absolutely cryptic order without giving any reason and the order has been passed without application of mind.

3. We find that in the papers of this appeal, there is no certified copy or ordinary copy of the impugned judgment dated 3rd March, 1988 although learned counsel for the appellant has submitted that he had filed one. Since the matter is as old as of 1989, we called upon the learned counsel for the appellant to supply an ordinary copy under his signatures. He has supplied the same and we have taken on record and the same has been included in the record and we proceed to decide this appeal on that basis.

4. We have heard learned counsel for the appellant and have gone through the impugned order dated 3rd March, 1988. The impugned order on the face of it is an order

which cannot be said to be a speaking order and it is very clear from the contents of the order itself that the learned Judge of the Small Causes Court has not decided the matter on the basis of the principles which ought to have been applied in the case of this nature. While he himself has mentioned that the premises in question is an industrial shed situated in GIDC estate in Odhav, without any basis he has come to the conclusion that the reasonable rent should be Rs.625/- per month and on that basis he has assessed the gross rateable value of this property at Rs.7,500/- There appears to be no basis for fixing the rent at Rs.625/- per month and it is also clear that he has proceeded on the factually incorrect premise that the built up area was 334 sq.mtrs. whereas the built up area was 481.50 sq.mtrs. It has also been mentioned at the outset of the impugned order that it was an appeal by the owner and yet he has fixed the rent to be Rs.625/per month and on that basis, the gross rateable value has been fixed at Rs.7,500/-. It has been notedd that construction was made in the year 1976, and reference has been made to the cost of construction. In in any case, we find that the conclusion arrived at by the learned Small Causes Court Judge while passing the present impugned order dated 3rd March, 1988 is not correct and is not based on the relevant facts and the principles which ought to have been applied, have been given a go bye. The conclusion is without any basis and it appears that there was no reason or material to interfere with the assessment made by the Municipal Corporation in this regard at Rs.6,408/- as gross rateable value.

4. The result is that this first appeal succeeds and the impugned order dated 3rd March, 1988 is hereby quashed and set aside and the assessment as was made by the Municipal Corporation is restored. No order as to costs.

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